HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Appeal No. 1591 of 2001
(Criminal Appeal No.2452/1984 Old No.)

Subash Chandra S/o Om Prakash
R/o Najibabad Road, Kothdwara
P.S. Kothdwara,
District Pauri Garhwal ……Appellant

Vs.

State of U.P. …..Respondent

Sri Raman Kumar Shah learned counsel for the appellant.
Sri K.S. Rautela learned brief holder for the State.

Hon'ble Irshad Hussain, J.

This is a criminal appeal under Section 374 read with 389 of the Code of Criminal Procedure (for short 'Code') against the judgment and order dated 22.8.1994 passed by the then Special Judge, Pauri Garhwal is Special Criminal Case No. 9/1983 convicting the appellant under section 7(1)(a)(i) of the Essential Commodities Act and sentencing him to undergo RI for nine months and to pay fine of Rs. 1000/-.

Learned counsel for the appellant did not dispute the propriety of the finding of the learned Special Judge in regard to the guilt of the appellant who had been convicted for offence punishable under section 7(1)(a)(i) of the Essential Commodities Act, 1955. The learned counsel only argued on the point of sentence by submitting that the occurrence took place more than 22 years ago and at the time of the occurrence there was a weight limit to store the 'Gur' scheduled commodity. There is no such limit at present under the provisions of any control order. At the time of the occurrence on 23.11.1982, the control order in force was Gur License Order, 1976. The appellant was found in possession of Gur weighing twenty quintals and forty kilograms instead of permissible limit of 10 quintals only. Considering the price of the commodity which was in excess with the appellant at the time of the occurrence, the ends of justice will be met if the sentence as argued is reduced and modified to the

sentence already undergone by the appellant and the fine of Rs. 1000/- is maintained.

For the reasons aforesaid, the appeal is parlty allowed. Conviction of the appellant under section 7(1)(a)(i) of the Essential Commodities Act as recorded per judgment and order dated 22.8.1984 is affirmed. The sentence of imprisonment is however modified to the sentence already undergone and fine of Rs. 1000/- (Rupees one thousand only). The appellant shall deposit the fine with the court concerned within a period of two months from today.

Let the record be sent back to the CJM concerned for compliance and report to be submitted within two months.

Dated 25.6.2004 **(Irshad Hussain, J.)**

Rawat